



Standards
Coordination
Office

National Institute of Standards
and Technology

Revision to OMB Circular A-119:

*Federal Participation in the
Development and Use of Voluntary
Consensus Standards and in
Conformity Assessment Activities*

What is OMB Circular A-119?

- **Guidance** to U.S. federal agencies from the Office of Management and Budget (OMB) in support of the National Technology Transfer and Advancement Act (NTTAA) – Public Law 104-113
- Provides agencies with guidance on
 - **Choosing and using** voluntary consensus standards in lieu of government-unique standards.
 - **Participation** in standards development activities
 - **Considerations** for use of private sector conformity assessment mechanisms.
- Directs the National Institute of Standards and Technology (NIST) to issue guidance on conformity assessment.
- Broad in scope - applies to regulatory activities, procurement activities, and programs.

Timeline

- 1996 – Public Law 104-113: NTTAA
- 1998 - [OMB Circular A-119](#) updated to reflect NTTAA
- February 2012 - OMB Request for Information (RFI)
- May 2012 – Public Workshop (hosted at NIST)
- February 2014 – [OMB Proposed Revisions Published](#)
- January 2016 – [Final Revision Published](#)

Factors Influencing The Revisions

- Experience gained by agencies in using the Circular since 1998
- Domestic and international developments in regulations, standards and conformity assessment policy, and concluding and implementing U.S. trade agreements
- Issuance of three recent Executive Orders addressing
 - Improving review of regulations (EO 13563)
 - Reducing regulatory burdens (EO 13610)
 - Promoting international regulatory cooperation (EO 13609)
- Issuance of White House memo “Principles for Federal Engagement in Standards Activities to Address National Priorities”
- Comments received by OMB from the RFI and Proposed Revision FR Notices.



Key Revision Themes

- Criteria for choosing and using voluntary consensus standards and other types of standards
- Determining reasonable availability of standards
- Participating in standards development activities
- Choosing methods of conformity assessment
- Considering international standards and obligations
- Additional agency guidance



Let's take a look at some areas addressed
by the Circular related to these themes.

Preference for Voluntary Consensus Standards

- The revised Circular continues preference for use of existing **voluntary consensus standards** over government-unique standards where feasible (*unless inconsistent with law or otherwise impractical*).
- Also permits agencies to consider other types of standards to meet the missions and priorities of the agency.

Attributes of a Voluntary Consensus Standard

A-119 focuses on the process used to develop the standards:

Openness

Balance

Due Process

Appeals Process

Consensus

Standards developed in a process that does not include all of these attributes are referred to merely as other standards.

Reasonable Availability of the Standard

- Reaffirms that federal agencies must respect the copyright of standards developers.
- References [Office of the Federal Register Rule on Incorporation by Reference](#).
- The proposed revised Circular provides **criteria** for agencies to consider when examining if a standard meets agency needs and should be adopted, including whether the standard is “**reasonably available**.”
- Where accessibility of standards content is concerned...

“...the agency should work with the relevant standards developer to promote the availability of the materials, consistent with applicable law, such as through the use of technological solutions, low-cost-publication, or other appropriate means, while respecting the copyright owner’s interest in protecting its intellectual property.”

Timely Updating of Standards

- Agencies should update standards on a timely basis using retrospective review mechanisms - *EO 13563, Improving Regulation and Regulatory Review* and *EO 13610, Identifying and Reducing Regulatory Burdens*
- Agencies should undertake a standards specific review of standards incorporated by reference **every 3 to 5 years** or sooner for matters of health, safety, the need to keep up with technological changes or other compelling reasons.
- Agencies should consult with stakeholders during the process of considering an update through an Advance Notice of Proposed Rulemaking or Request For Information prior to issuance of a Notice of Proposed Rulemaking to help identify concerns early.

Advice on Agency Participation in Standards Development

- Further guidance is provided on how Federal representatives should participate in standards development activities:
 - Must be authorized by their agency
 - May serve on Board or in leadership positions
 - Should advise the public when participating on matters of national priority or significant regulatory action.

....active agency technical involvement and leadership in standards activities is encouraged...

....actively and on an equal basis with other members...

Conformity Assessment

- Expanded guidance on conformity assessment is included.
- Agencies should consider the level of confidence needed, the risks associated with non-compliance, and the costs of demonstrating conformity.
- Agencies should consider use of **international conformity assessment systems** and **private sector conformity assessment mechanisms** in lieu of or in conjunction with government conformity assessment procedures.
- Provides general criteria for selecting conformity assessment procedures, including consulting with NIST and OMB.
- Agencies should also consult with The Office of the United States Trade Representative (USTR) on relevant international obligations for conformity assessment.

Use of International Standards

“...the United States is obligated under the TBT Agreement to use relevant international standards, except where such standards would be an ineffective or inappropriate means to fulfill the legitimate objective pursued.”

- World Trade Organization (WTO) Technical Barriers to Trade (TBT) Agreement Article 2.4 is referenced.
- WTO Agreement on Government Procurement Article X.2 is referenced
- New **Annex A**: WTO TBT Decision of the Committee on Principles for Development of International Standards
- Agencies should consult with USTR when evaluating if a voluntary standard developed by a particular standards body is “International.”

Complying with International Obligations

- Revisions direct federal agencies to consult with USTR and the State Department on how to comply with international trade (e.g., WTO Agreement) and other international obligations relating to standards and conformity assessment:

“... consult with USTR on how to comply with international trade obligations relating to standards, technical regulations and conformity assessment...”

“...consult with the State Department, to the extent international obligations other than trade obligations may be implicated.”

Additional Agency Guidance

- Encourages Greater Role for Interagency Committee on Standards Policy (ICSP)
- Emphasizes coordination among federal agencies
- Strengthens Role of Agency Standards Executives
 - Includes qualifications for Standards Executives
 - Senior level official
 - Knowledge/experience
- Updates Agency Reporting Requirements (via NIST) on Development and Use of Standards

Summary

A-119 has been revised to reflect changes in policies and practices since last updated in 1998.

Detailed guidance on:

- ***Choosing and using voluntary consensus standards in government programs.***
- ***Considering reasonable availability of standards.***
- ***Considering international obligations in using standards and conformity assessment.***
- ***Using private sector conformity assessment mechanisms.***
- ***Participating in voluntary standards development.***
- ***Encouraging stronger role of ICSP and agency standards executives.***

What's Next? NIST is developing plans to update its Conformity Assessment Guidance to complement the revised Circular.



Questions?

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